

APPEAL NO. 022428
FILED NOVEMBER 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 20, 2002. The hearing officer determined that the appellant's (claimant) impairment rating (IR) is zero percent. The claimant appealed, arguing that the "hearing officer improperly afforded the designated doctor's opinion on causation with presumptive weight when the designated doctor refused to rate the compensable injury" and that the "hearing officer erred in that the great weight of the other medical evidence is contrary to the designated doctors' opinion." The respondent (carrier) responded urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The Texas Workers' Compensation Commission (Commission)-appointed designated doctor is Dr. R. On April 10, 2002, Dr. R certified that the claimant reached maximum medical improvement on April 10, 2002, with a zero percent IR, pursuant to Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). Dr. R diagnosed the claimant with sacroiliitis. An MRI of the lumbar spine dated June 18, 2001, reflects that the claimant has "mild degenerative changes [sic] present to the facets of L4-5 and L5-S1"; a "mild central to left paracentral disc bulging at L4-5 posteriorly"; and a "mild to moderate left paracentral disc protrusion is seen at L5-S1 displacing the thecal sac posteriorly and left nerve root laterally and posteriorly." An MRI of the lumbar spine dated January 1, 2002, reflected a "central disc protrusion at L5-S1 . . . similar findings were described on 6/18/01. *Otherwise negative lumbar spine MRI.*" [Emphasis added.] On May 28, 2002, the Commission sent a letter of clarification to Dr. R to review the claimant's assertion that Dr. R misapplied the AMA Guides by evaluating the claimant's condition under DRE Lumbrosacral Category I with a zero percent IR, rather than DRE Lumbrosacral Category II with a five percent IR according to the MRI findings. On June 8, 2002, Dr. R responded that he reviewed the Commission's letter and that "[n]o neurological abnormality was found in his left leg. This is Lumbrosacral Category I impairment. The MRI findings do not absolutely relate to either the fall or to the current symptoms." Dr. R opined that he was not persuaded to alter the claimant's zero percent IR.

The hearing officer did not err in determining that the claimant's IR is zero percent. The designated doctor's IR report has presumptive weight and the Commission must base its determination of IR on the designated doctor's report unless the great weight of the other medical evidence is to the contrary. Section 408.125(e).

The hearing officer could conclude from the medical evidence that the compensable injury was merely a soft tissue injury (sprain/strain) and there was no objective sign of radiculopathy ("no neurological abnormality was found in his left leg"). The designated doctor concluded that the MRI findings of a bulge and a hernia did not absolutely relate to the compensable injury or to the current symptoms. The hearing officer could, therefore, conclude that the designated doctor properly found that the claimant's compensable injury warranted a zero percent IR under DRE Lumbrosacral Category I. Also, the hearing officer concluded that the ratings and evaluations of the other doctors reflect a difference of medical opinion, and, as such, the great weight of the other medical evidence is not contrary to the designated doctor's certification. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Veronica Lopez
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge